IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 236 OF 2006

Asif Zojawalla and anr. ....Applicants

V/s

State of Maharashtra ...Respondent.

Ms. Jyoti Chavan i/b Harshad Bhadbhade for the applicant.

Mr. S.R. Borulkar, Chief P.P. with Ms. S.V. Gajre, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 3rd March, 2006

P.C.:

1. Heard the learned Counsel for the applicants and

the learned Chief Public Prosecutor for the State.

3. This is an application for anticipatory bail. The applicants have an apprehension that they are likely to be arrested in connection with C.R. No. II-111/2005 registered at Panvel Town Police Station for the offences punishable under sections 3, 7, 8, 9, 10 of the Essential Commodities Act, 1955 and section 3(b) of the Motor Spirit and High Speed Diesel Regulation of Malpractices Order, 1988. A complaint was lodged by one Mr. Pardeshi who is a District Supply Officer, Alibag - Raigad. It is alleged that on 1/6/2005, the applicants alongwith others were

found to be unloading adulterated diesel oil in the underground tank at the pump. After the raid was conducted, the driver of the tanker and other staff could not produce any voucher in respect of the said material. A sample was taken. It was sent to Chemical Analyser. The report indicates that the said material was not adulterated.

4. The learned Counsel appearing on behalf of the applicants submitted that no offence was committed by the applicants. She has further submitted that on account of the complaints which were received from the customers to the effect that the diesel contains water, the underground tank was to be cleaned and for that purpose the diesel was removed and that after the repair work was over, the diesel was being filled up in the tanker again. She submitted that the applicants have necessary vouchers and invoices which indicated that the applicants had received the said diesel from the authorised person viz. Oil Company. She submitted that even the Collector had returned the diesel back to the applicants by his order dated 8/12/2005.

5. Mr. Borulkar, the learned Chief Public Prosecutor, on the other hand, invited my attention to

the order issued by the Ministry of Petroleum and Natural Gas dated 19/12/2005 where the malpractices under the Act were specified and one of the malpractice was unauthorized exchange or purchase of the petroleum product. He invited my attention to the Register of the Oil Company which indicated that 12000 litres of diesel had been sent from the Company to the applicants. However, in the official records of the applicant, there was no reference to the receipt of the said diesel. It is submitted that, therefore, this is not a fit case for grant of an anticipatory bail.

6. After having considered the rival contentions, in my view, no case has been made out for grant of an anticipatory bail. The applicants have not been in a position to satisfactorily explain the non-receipt of the diesel. There is also some discrepancy in the stock which is maintained by the applicants. Though the sample which was taken by the police does not show any adulteration, yet the possibility of unauthorized exchange or purchase cannot be ruled out.

7. In these circumstances, the application for anticipatory bail is rejected. It is however clarified that if the application for bail is

preferred by the applicants to the regular court, any observation made by this Court while deciding the anticipatory bail application should not be construed as an expression of opinion on merits and the application for regular bail may be considered on its merits and in accordance with law. The applicants undertake to surrender to the Police or the Competent Court within one week.

8. Application is accordingly disposed of.

V.M. KANADE, J.